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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Limitations on Commercial Time on) MM Docket No. 93-254
Television Broadcast Stations)

To the Commission:

STOP CODE 1800D

COMMENTS OF HOME SHOPPING NETWORK, INC.

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SUMMARY OF COMMENTS

The Commission's expectation that television deregulation would foster experimentation and innovation has been realized with the institution of the home shopping format. This pioneering use of interactive television to bring shopping services directly to the home has proven extremely popular with the public, and the home shopping format has in consequence enjoyed steady growth.

Any new or reimposed restriction on home shopping's continued development would contravene the public interest. That regulatory guiding light is designed to be flexible and adaptable to reflect current market conditions. Today's video marketplace is characterized by an extraordinary degree of format and outlet diversity. As such, it differs dramatically from the media environment which existed at the time when the Commission first addressed concerns about overcommercialization and even from that which existed at the time of Television Deregulation. Today's public interest is thus drastically different from yesterday's.

In the contemporary video environment, past criticisms of television stations' commercial practices have lost their relevance. Similarly, claims that public dislike of commercialization justifies restriction of home shopping

formats are disproven by the format's continued growth and popularity.

Visceral dislike or disdain for the home shopping format does not afford a lawful basis for its regulation. The Commission has never based its decisions on subjective determinations that a particular program or format is "good" or "bad." Requests that it restrict the home shopping format would require abandonment of this constitutionally- and statutorily-required practice. The Commission cannot and must not do so.

Such a departure would be particularly constitutionally egregious in light of the entertainment value of home shopping programming. The Louis Harris survey appended to these comments demonstrates that viewers watch home shopping programming for entertainment and secondarily for information. As entertainment programming, home shopping programming is entitled to the highest possible degree of First Amendment protection. The Commission's traditional reluctance to become involved in program content regulation is therefore clearly appropriate in this proceeding.

Home shopping's critics have never cited any social harm or damage associated with the format. Certainly, the survey results cited herein indicate that there is no need for paternalistic Commission protection of

consumers who might want to make purchases: most home shopping viewers do not watch to purchase and do not make purchases.

If a desire for the Commission to act in loco parentis is not their motivation, home shopping's critics still have never explained why it is permissible for audiences to be entertained by "Gilligan's Island" or "NYPD Blue" but not by home shopping programming, which is also, as the survey establishes, entertainment. They have never explained what is wrong or bad or unacceptable about the broadcast of commercial material in general or home shopping programming in particular. They have, in short, cited no governmental interest which would support governmental regulation of home shopping speech.

The need for a substantial governmental interest is particularly compelling in light of the affirmative benefits associated with the availability of home shopping programming. The Commission has expressly recognized these benefits, which include service to viewers who may not have or desire other methods of shopping; home shopping's unmatched commitment to minority television station ownership; and home shopping's pioneering role in the introduction of interactive video services.

The First Amendment demands that content-based restrictions on speech, even pure commercial speech, must

directly advance an asserted governmental interest in the least restrictive manner possible. Here, home shopping cannot be fairly characterized as "pure" commercial speech. In any event, there has never been any demonstration of any governmental interest (much less a compelling one) in restriction of the home shopping format. To the contrary, its demonstrated benefits suggest a governmental interest in its unfettered development. The First Amendment, in short, precludes regulatory restrictions on the home shopping format.

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Home Shopping Network, Inc. ["HSN"]^{1/}, by its attorneys, submits herewith its comments in the above-captioned proceeding.^{2/}

Introduction

On August 21, 1984, the Commission released its Report and Order substantially deregulating commercial

^{1/} HSN is the largest broadcast electronic sales retailer in the United States. It was the first company in the country to offer an over-the-air broadcast home shopping service. Until December 28, 1992, HSN was also the parent of the licensees of twelve television stations, all of which carried the programming of its Home Shopping Club. At that time, the licensee subsidiaries were spun off to Silver King Communications, Inc. ["SKC"], a publicly-owned corporation whose stock is traded on NASDAQ. See FCC File Nos. BTCCT-920918KD, KF-KJ, KL-KN, KP-KT. HSN provides home shopping program services to both broadcast stations and cable television systems.

^{2/} Notice of Inquiry, MM Docket No. 93-254, 7 FCC Rcd 7277 (1993) ["Notice"]. By Order dated November 22, 1993 (DA 93-1425) the due date for these comments was extended to December 20, 1993.

television.^{3/} Among other provisions, that decision eliminated the television commercial guidelines.^{4/} This action was based upon the Commission's recognition that the changed and increasingly competitive nature of the video marketplace made such artificial limitations unnecessary and unwise; the guidelines' repressive impact on "...the ability of commercial television stations to present innovative and detailed commercials;"^{5/} and their "potential chilling effect on commercial speech."^{6/}

The Commission hoped that deregulation of television stations' commercial practices would foster innovation and experimentation. Television market developments have more than fulfilled this expectation. In particular, it facilitated the introduction of a new broadcast television format: home shopping.^{7/} This

3/ Report and Order, MM Docket No. 83-670, 98 FCC 2d 1076 (1984) ["Television Deregulation"], recons. denied, Memorandum Opinion and Order, 104 FCC 2d 358 (1986), aff'd in part and remanded in part sub. nom., Action for Children's Television v. FCC, 821 F.2d 741 (D.C. Cir. 1987).

4/ Former 47 C.F.R. § 0.283(a)(7).

5/ Television Deregulation, 98 FCC 2d at 1104.

6/ Id.

7/ HSN's home shopping programming is divided into segments broadcast live with a host or hostess who presents merchandise available for purchase by viewers. Show hosts describe the merchandise one product at a time, conveying information concerning its quality, uses, attributes and prices. Viewers may order the merchandise by using a toll-
(continued...)

pioneering application of interactive television, a harbinger of future technological innovations in transactional use of video capabilities, has earned widespread public acceptance and popularity.

Beginning in the fall of 1986 with HSN's acquisition of three television stations, televised home shopping services have flourished, reflecting the significant public demand for and popularity of this entertainment format. At present, for example, HSN provides two separate network services to television broadcast stations: HSN 2 is provided to 24 full power stations (including the SKC Stations) and 10 low power television stations, while HSN 4 (or HSN Spree) is distributed for carriage primarily on a part-time basis to approximately 71 affiliated full power stations and 41 low power television stations. Both of these broadcast services make provision for affiliates' insertion of local public service, public

7/ (...continued)
free telephone number. The hosts also engage callers in spontaneous on-air discussions concerning the programming, the products and their previous home shopping experiences, and share personal chatter such as family anecdotes and recipes.

affairs, news, informational, religious and children's programming, as well as local advertising and/or public service announcements.^{8/}

HSN is not the only entity providing broadcast home shopping services, however. For example, noncommercial educational television station WTTW, Chicago, is seeking to institute a home shopping service on a national basis.^{9/} Local stations are also experimenting with home shopping programs.^{10/} Valuevision International, whose home shopping service initially relied on low power television stations, has recently acquired four full service television stations, signalling institution of additional broadcast home shopping services.^{11/} Televised home shopping is even going

8/ HSN also provides a home shopping service, HSN 1, to cable television systems. Unlike HSN's broadcast services, its cable service makes no provision for local insertion of public interest programming and is supplied directly to cable headends via satellite.

9/ Communications Daily, November 3, 1993, at 6; "PBS Station Offers Shopping From Homes," The Wall Street Journal (Oct. 15, 1993) at B14.

10/ See, e.g., "Old Kentucky home shopping," Broadcasting & Cable, December 6, 1993, at 91.

11/ "Time Warner, Spiegel shop for viewers," Broadcasting & Cable, October 4, 1993, at 22; Communications Daily, October 27, 1993, at 7; Broadcasting & Cable, October 25, 1993, at 65.

international.^{12/} In other words, the public affirmatively desires and supports televised home shopping services.

If home shopping programming did not respond to a strongly felt public need, it would not be successful. People are not forced to watch home shopping programming -- there are a multitude of video alternatives in the marketplace -- and they are not forced to make purchases if they do choose to watch. The Commission has no mandate to act in loco parentis for America's adult viewing population by restricting the availability of home shopping programming.

The Notice nonetheless seeks comments on whether the Commission should disregard the emphatic public demand for televised home shopping services and reimpose commercial limits or other restrictions on the format. Any such return to pre-deregulation limitations on the telecast of commercial matter would be content-based regulation clearly prohibited by the First Amendment. Such restrictions would be especially constitutionally abhorrent in light of the lack of any demonstrated or demonstrable harm associated with the airing of commercials for or commercial material concerning lawful products or services.

^{12/} "French retailer considers TV home shopping," Financial Times, November 26, 1993, at 20.

The home shopping format should not be singled out for isolated repressive regulatory treatment. Transactional video -- a concept not even contemplated in 1984 but now being developed in the rapidly expanding video marketplace -- serves an affirmative public interest purpose, affording particular audiences access to the commercial marketplace they might not otherwise enjoy. It has also materially contributed to the growth and development of minority television station ownership. There is no legal or technological basis for regulatory differentiation between programming for entertainment and programming for salability.

The Commission cannot constitutionally discourage one particular program format through reimposition of commercial limits or other restrictions on home shopping programming. It must instead promptly terminate this inquiry by affirming Television Deregulation's grant of freedom to experiment with new programming and commercial formats, letting the marketplace rather than the government be the determinant of success.

The Public Interest Precludes
Restrictive Regulatory Treatment of Home Shopping Formats

In deregulating television stations' commercial practices, the Commission noted that "[a] significant danger posed by our commercial guideline is that it may impede the ability of commercial television stations to present

innovative and detailed commercials...[O]ur regulation may also interfere with the natural growth and development of broadcast television as it attempts to compete with future video market entrants."^{13/} The agency hoped that commercial deregulation would "...promote licensee experimentation and otherwise increase commercial flexibility."^{14/}

The advent and growth of home shopping fulfilled this hope. Indeed, the Commission has expressly acknowledged that home shopping represents precisely the type of innovative programming which Television Deregulation was designed to encourage.^{15/}

Home shopping represents the first practical and successful application of interactive television. No television station had aired such programming before HSN introduced the format. The public liked and accepted it and others are now experimenting with it. This pioneering effort could well be the forerunner of additional inventive applications of interaction between viewers and the programmer. The Commission should not act to discourage the

^{13/} Television Deregulation, 98 FCC 2d at 1104.

^{14/} Id. at 1105.

^{15/} See, e.g., Family Media, Inc., 2 FCC Rcd 2540, 2542 (1987), aff'd sub nom., Office of Communication of the United Church of Christ v. FCC, 911 F.2d 803 (D. C. Cir. 1990) ["UCC"] ["We view this relatively new 'format' as an example of license[e] experimentation and regulatory flexibility."]; see also Home Shopping [Network] [sic], Inc., 4 FCC Rcd 2422 (1989).

risk-taking which drives such creativity by returning to a bygone era of excessive regulation.

To do so would be to betray the very essence of the public interest. As the Supreme Court recognized almost fifty years ago, the public interest is not static, but is a consistently evolving standard, designed to be sufficiently flexible to ensure that the public continues to be served notwithstanding changes in society and the media marketplace.^{16/} Congress purposely left the standard undefined, to be given meaning commensurate with current conditions through the Commission's exercise of its broad powers under the Communications Act.^{17/} The Commission has responded to Congress' mandate by refining its definition of the public interest in response to changing marketplace developments.

For example, the Commission at one time viewed extensive time brokerage arrangements as inconsistent with the public interest.^{18/} As broadcast competition developed, the Commission re-examined such arrangements and concluded

16/ See FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 138 (1940).

17/ See, e.g., National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630, 638, n. 37 (D.C. Cir. 1976); Office of Communication of the United Church of Christ v. FCC, 707 F.2d 1413, 1423-1424 (1983).

18/ Policy Statement on Part-Time Programming, 82 FCC 2d 107, 108 (1980).

that they were a potential source of diverse programming which served, rather than disserved, the public interest.^{19/} Similarly, the Commission has changed its media ownership restrictions in response to the evolving media marketplace.^{20/}

Here, too, the changing video landscape demands a fresh approach to the public interest. Over the past two decades, the nation's viewers have been introduced to a fourth national network (with a fifth on the horizon) and a dramatically increased number of sources for video

19/ Report and Order, MM Docket No. 91-140, 7 FCC Rcd 2755 (1992), recons., 7 FCC Rcd 6387; see also, Notice of Proposed Rulemaking, MM Docket No. 91-221, 7 FCC Rcd 4111 (1992).

20/ For example, the Commission has deleted the Golden West policy, Report and Order, BC Docket No. 80-438, 87 FCC 2d 668 (1981); the Top 50 market policy, Report and Order, BC Docket No. 78-101, 75 FCC 2d 585 (1979), recons. denied, 82 FCC 2d 329 (1980), aff'd sub nom., NAACP v. FCC, 682 F.2d 993 (D.C. Cir. 1982); and the regional concentration of control rules, Report and Order, MM Docket No. 84-19, 101 FCC 2d 402 (1984), recons. denied, 100 FCC 2d 1544 (1985). It has substantially modified its radio ownership rules, Report and Order, MM Docket No. 91-140 7 FCC Rcd 2755 (1992), recons., Memorandum Opinion and Order and Further Notice of Proposed Rule Making, FCC 92-361 (September 4, 1992); and its one-to-a-market rule, Second Report and Order, MM Docket No. 87-7, 4 FCC Rcd 1741 (1989), recons., 4 FCC Rcd 6489 (1989). It has modified its television station multiple ownership rules, Report and Order, Gen. Docket No. 83-1009, 100 FCC 2d 17 (1984), recons., 100 FCC 2d 74 (1985), and proposed substantial additional relaxation of television ownership restrictions, Notice of Proposed Rulemaking, MM Docket No. 91-221, 7 FCC Rcd 4111 (1992). All of these actions have been premised upon the Commission's express recognition that changes in the media marketplace required changes in its interpretation of the public interest.

programming. New video formats -- not just home shopping, but all-news, all-sports and even cooking -- are being inaugurated regularly. (Notably, other new video program formats are not subject to particular regulatory restrictions.) This new video environment requires a new approach to the public interest.

The Commission's past decisions sought to give contemporary meaning to the public interest standard. The results of this inquiry must likewise look forward, not backward.

In Today's Media Marketplace,
There is No Governmental Interest
In the Repression of Broadcast Commercial Speech

Thirty years ago when the Commission's En Banc Programming Inquiry denounced overcommercialization,^{21/} the video marketplace was far different than it is today. As of January 1, 1961, shortly after the decision, there were only 583 television stations on the air.^{22/} Cable television was but an isolated local phenomenon designed only to enhance reception quality. Satellite delivery of programming, much less direct satellite broadcasting, was unheard of. There were three major television networks, which dominated

21/ Commission en banc Programming Inquiry, 44 FCC 2203 (1960).

22/ Broadcasting & Cable Yearbook (1993) at C-226. There were also 4,354 AM and FM stations, with AM being the dominant radio medium (3,539 stations). Id. at B-590.

television programming.^{23/} In that era of limited choices and limited competition, there may have been some public interest in limiting commercialization and program-length commercials.^{24/}

But times have changed. As of January 1, 1985, shortly after Television Deregulation, there were 1,149 television stations on-air, as well as 4,754 AM stations and 4,888 FM stations.^{25/} There were only 6,600 cable systems, serving 32,000,000 subscribers.^{26/}

There are now 1,518 commercial and non-commercial television stations, as well as 1,436 low power television stations and a total of 11,558 AM and FM radio stations.^{27/}

23/ This dominance continued well into the 1970's. See, e.g., Network Television Broadcasting, 23 FCC 2d 382 (1970), aff'd sub nom., Mt. Mansfield Television v. FCC, 442 F.2d 470 (2d Cir. 1971).

24/ The Federal Radio Commission's statement that "...broadcasting stations are not given these great privileges by the United States Government for the primary benefit of advertisers" must thus be read against its concurrent observation about the then "paucity of channels." Statement Made by the Commission on August 23, 1928, Relative to Public Interest, Convenience or Necessity, 2 FRC Ann. Rep. 166 (1928), reprinted in F. Kahn, ed., Documents of American Broadcasting (4th ed 1984) ["Kahn"] at 57, 60, 61.

25/ Broadcasting & Cable Yearbook (1993) at C-226, B-590.

26/ Television & Cable Factbook, No. 61, Services Volume (1993) at I-68.

27/ FCC Public Notice, "Broadcast Station Totals as of November 30, 1993," (December 10, 1993).

Broadcast television is overshadowed by cable television, with approximately 11,385 systems serving over 55,000,000 subscribers^{28/} with a mind-boggling array of satellite-delivered and locally-produced video programming services. Direct satellite broadcasting is about to take off.^{29/} Talk of 500-channel video services no longer sounds like a fairy tale.

In this media environment, the prospect of a return to commercial limits sounds like a return to the Ice Age. Notions of spectrum scarcity which once might have supported some restrictive regulations have little practical or legal validity on contemporary market environments.^{30/} Today's cornucopia of media offerings offers viewers a staggering array of options, including channels that offer nothing but sports, news, comedy, cooking or coverage of legislative or judicial proceedings. In such a media marketplace, so different from that of a decade ago, some stations' adoption of a format which consists primarily of

28/ TV & Cable Factbook, No. 61, Cable Volume at F-2 (1993).

29/ See, e.g., "Countdown to DBS," Broadcasting & Cable, December 6, 1993, at 30.

30/ Indeed, the fundamental concept of spectrum scarcity is itself the subject of significant judicial reevaluation. See, e.g., Telecommunications Research and Action Center v. FCC, 801 F.2d 501, 517 (D.C. Cir. 1986), reh'g en banc denied, 806 F.2d 1115 (D.C. Cir. 1986), cert. denied, 107 S.Ct. 3196 (1987).

sales presentations or program length commercials does not disserve the goal of viewpoint diversity. To the contrary, it contributes to it.

In short, in an era where choice and competition characterize television broadcasting, there is no credible justification for such archaic content-based limitations. As the Supreme Court has stated, "...because the broadcast industry is dynamic in terms of technological change, solutions adequate a decade ago are not necessarily so now, and those acceptable today may well be outmoded 10 years hence."^{31/} Commercial limitations are such "outmoded" solutions to a no-longer-extant problem.

Calls for the reimposition of governmental restrictions on the broadcast of commercial speech notwithstanding existing market conditions are premised upon the notion that commercial, as opposed to entertainment programming, is somehow inherently bad. Such claims are frequently supported by reference to isolated language in distant legislative history and outdated decisions which reflect a media environment which has not existed for years.

However, the early legislative history of the Communications Act, even if deemed completely relevant to today's media marketplace, fails to support commercial

^{31/} Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94, 102 (1973).

reregulation. In opposing mandatory carriage for home shopping formatted stations, for example, the Center for the Study of Commercialism ["CSC"] referenced Senatorial colloquies on a proposed (and defeated) amendment which would have required that 25% of radio facilities be reserved for use by educational organizations.^{32/} The language CSC cites, however, relates specifically to the defeated amendment, not to more general concepts relating to broadcast of commercial matter.

Even if it is interpreted as doing so, the cited language is merely a statement about public demand for commercial programming rather than a conclusion as to its desirability.^{33/} If public demand is to be the measure of the need for regulation, then the demonstrated growth and public appeal of the home shopping format demand continued deregulation.

Decades-old Commission pronouncements concerning commercialization likewise fail to point to any inherently harmful aspect of commercial programming. The Commission appears to have been concerned that too much commercial

32/ Comments of the Center for the Study of Commercialism, MM Docket No. 93-8 (March 29, 1993) at 6 - 7.

33/ "That is not what the people of this country are asking for." 77 Cong. Rec 8830 (May 15, 1923) (statement of Senator Dill).

matter is offensive to the audience^{34/} or will impede licensees' ability to comply with their public service obligations.^{35/} Neither concern retains validity in today's media marketplace.

Television Deregulation recognized that in highly competitive contemporary media markets, viewers are perfectly capable of finding alternatives to offensive programming and do not need the Commission to protect them from programming which is not to their taste. The variety of entertainment and information available today on broadcast television (not to mention other video media) eliminates the pressure which once was placed on television stations to be all things to all viewers.^{36/} It also ensures

34/ See, e.g., Report and Order, Docket No. 15083, 36 FCC 45 (1964) ["Commercial Advertising Standards"]: "...this station is one which exists chiefly for the purpose of deriving an income from the sale of advertising of a character which must be objectionable to the listening public..." [source not provided].

35/ See, e.g., id.: "The Federal Radio Commission stated as a principle of decision in competition for the assignment of frequencies that 'the amount and character of advertising must be rigidly confined within the limits consistent with the public service expected of a station'." [source not provided]; Public Service Responsibility of Broadcast Licensees (The Blue Book) (March 7, 1946), reprinted in Kahn, at 148, 157 ["...some stations during some or many portions of the broadcast day have engaged in advertising excesses which are incompatible with their public responsibilities, and which threaten the good name of broadcasting itself."]

36/ Almost a decade ago, Television Deregulation recognized the extent of diversity within media markets by
(continued...)

that formats which are offensive to viewers will not survive. The marketplace is more effective than the government in ensuring that station formats will conform to viewers' desires,^{37/} and the popularity of the home shopping format indicates that viewers desire its unrestricted availability.

So long as stations comply with their fundamental public service programming obligations -- and the Commission has repeatedly concluded that stations with a home shopping format do so^{38/} -- the nature of their entertainment programming (so long as it is consistent with other

^{36/} (...continued)
allowing stations to rely on other market stations' programming in satisfying certain public service obligations. Television Deregulation, 98 FCC 2d at 1092. Contemporary media diversity thus eliminates the Commission's concerns of thirty years ago that excess commercialization might prevent television stations from affording adequate entertainment and other programming of interest to the public.

^{37/} Critics of the home shopping format have never explained why its success should be penalized.

^{38/} See, e.g., Report and Order, MM Docket No. 93-8, 8 FCC Rcd 5321 (1993) ["Must Carry Report"]. Both the Commission and the courts have thoroughly reviewed the SKC Stations' general entertainment and non-entertainment programming and concluded that the stations' operations conformed to the public interest. See, e.g., Family Media, Inc., 2 FCC Rcd 2540; Silver King Broadcasting of Vineland, Inc., 2 FCC Rcd 324 (1986), recons. denied, Press Broadcasting Co., 3 FCC Rcd 6640 (1988), aff'd, Office of Communications of the United Church of Christ v. FCC, 911 F.2d 803 (D.C. Cir. 1990); Silver King Broadcasting of Vineland, Inc., 5 FCC Rcd 7499 (1990). The license renewal applications of the SKC Stations and other stations affiliated with HSN have routinely been granted.

statutory requirements) should not and cannot constitutionally be a matter of Commission concern.

Significantly, home shopping programming, in addition to its commercial elements, clearly has entertainment value. Attached hereto as Exhibit No. 1 is "A Survey of Viewers of TV Shopping Programs" conducted by Louis Harris and Associates, Inc. [the "Harris Survey"]. That survey, designed to determine why home shopping viewers watch those programs, determined that they do so mainly for entertainment and interest. In particular, 21% of home shopping viewers watch only for entertainment and 32% watch mainly for that purpose. Only 14% of viewers watch only or mainly to buy something. Nearly two-thirds (65%) of viewers found entertainment value an important reason to watch television shopping programming.

Home shopping programming is valued not only for entertainment: the Harris Survey indicates that 54% of viewers rated provision of "information regarding products" as a very important reason to watch, while 31% of viewers found this a somewhat important reason.

In short, home shopping programming is entertaining, and thus is entitled to Commission treatment as an entertainment format notwithstanding its commercial content. And as the Commission has refused to engage in

entertainment format regulation,^{39/} it must forego restrictions on the home shopping format. Indeed, home shopping's entertainment character precludes any regulatory treatment as "mere" commercial speech. As complex communication, principally involving elements of entertainment and information, its entitlement to constitutional protection rises above the substantial protection already accorded pure commercial speech.^{40/}

Past Commission statements which criticize program-length commercials as "subordinating programming in the public interest to programming in the interests of salability"^{41/} not only fail to acknowledge that home shopping is entertaining: they never explain what harm is associated with programming for salability. All commercial station programming is ultimately designed to gain revenues: home shopping entertainment differs from conventional entertainment in that regard only in its elimination of the

39/ The Commission has long accorded licensees essentially complete discretion with respect to their entertainment formats. See FCC v. WNCN Listeners Guild, 450 U.S. 582 (1981); WPIX, Inc., 68 FCC 2d 381 (1978); Sonderling Broadcasting Corp., 39 RR 2d 642 (1977).

40/ See generally, City of Cincinnati v. Discovery Network, Inc., 113 S.Ct. 1505 (1993); Edenfield v. Fane, 113 S. Ct. 1792 (1993); Bates v. State Bar of Arizona, 433 U.S. 350 (1977); Board of Trustees of the State University of New York v. Fox, 492 U.S. 469 (1989); Central Hudson Gas & Elec. Corp. v. Public Service Comm'n, 447 U.S. 557 (1980).

41/ Commission Policies on Program Length Commercials, 44 FCC 2d 985 (1974).

advertiser as a middleman.^{42/} That distinction, however, affords no basis for any regulatory differentiation.

Contemporary criticism of home shopping boils down to nothing more than an adverse visceral reaction to broadcast commercial matter in any form.^{43/} For example, legislation which would have deprived stations with a home shopping format of mandatory cable carriage rights was motivated by dislike for the format.^{44/} Then-Chairman

^{42/} It is hornbook law that broadcasting was established as a private business enterprise to be operated on commercial principles. See, e.g., FCC v. Sanders Bros. Radio Station, 309 U.S. 470, 475 (1940).

^{43/} Perhaps this dislike stems from a belief that the government should prevent consumers from spending money. Quite apart from the impact such a policy would have on the nation's economy, the fact is that studies show that home shoppers tend to be shoppers in any event, and see home shopping "as another viable, legitimate shopping option, part of their regular shopping arsenal." WSL Marketing "Smart Marketing Report," "Television Shopping: The New Retailing" (1993) ["WSL Report"] at 2.

^{44/} See, e.g., Executive Session: Mark-Up Hearings on S-12 Before the Subcommittee on Communications of the Senate Committee on Commerce, Science and Transportation, 102d Cong., 1st Sess. 20-22 (May 14, 1991).